



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 8, 1991

Mr. Michael Anthony Moss
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR91-474

Dear Mr. Moss:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13684.

We note, that you may have violated the "ten day rule." Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

The request for information was transmitted by facsimile machine to the City of Houston at "10:47" on September 9, 1991. It is not clear whether "10:47" refers to a.m. or p.m. The City apparently did not mail its request for an open records decision until September 20. A transmission received at "10:47" p.m. on September 9 would in all likelihood have been first noticed on September 10 and is thus considered "received" on that day. Because it is unclear whether the request for information was received on September 9 or September 10, we conclude that your

request for an open records decision was timely for purposes of section 7(a).

The Houston Housing and Community Development Department has received a request for "copies of outside appraisals performed for the city on El Mercado del Sol." You claim that information responsive to the request includes eight appraisal reports prepared by outside independent appraisers for the City of Houston. You claim that these appraisal reports are excepted from required public disclosure by section 3(a)(5) of the Open Records Act.

Section 3(a)(5) excepts from required public disclosure

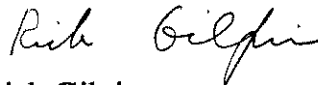
information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.

Section 3(a)(5) is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision No. 564 (1990). Whether a particular appraisal report falls under section 3(a)(5) is a question of fact, and the attorney general will accept a governmental body's good faith determination that release of an appraisal report would damage its future negotiating position, unless the contrary is shown as a matter of law. *Id.* Information excepted under section 3(a)(5) which pertains to negotiations for the acquisition of real or personal property may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982).

You advise us that the City of Houston "intends to seek proposals and recommendations from the private sector regarding possible uses for the (El Mercado del Sol) Project." You further advise that "one option available to the City is the sale of the Project. This option necessarily would involve negotiations between the City and potential purchasers regarding the purchase price of the Property." We have considered the exception you claim and have examined the documents submitted to us for review. We conclude that the requested information may be excepted from required public disclosure under section 3(a)(5) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-474.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GK/lcd

Enclosures: Open Records Decision No. 564

Ref.: ID# 13684

cc: Mr. James Robinson
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002